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SPEECH

OF

MR. DUNCAN, OF KENTUCKY,

ON THE

ASSUMPTION OF POWER BY THE EXECUTIVE:

DELIVERED

IN THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES,

JULY 24, 1848.

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SPEECH.

The question before the House being on the reference of the President's message in relation to the establishment of Territorial Governments in New Mexico and California, &c.—

Mr. DUNCAN, of Kentucky, addressed the House as follows:

I am pleased to find that a disposition has been manifested by some members on this floor to speak on the subject before the House. The message which has just been read was produced by a call suggested by the message of the 6th of July, which now lies upon your table, and which has found its way into the public journals. It appears to be, so far as I was able to judge by the reading of it by the clerk, but an elongation and defence of the principles set forth in the message of the 6th July. Sir, these two messages are, in my judgment, so full of error, and they contain propositions so startling, so repugnant to the first principles of our Constitution, and so subversive of every thing that has hitherto been regarded as settled by the laws of nations, that I cannot refrain from noticing some of their extraordinary positions. It is my belief that, by searching all our archives, we can find nothing so derogatory to American statesmanship as these two public documents emanating from our American Cabinet. The mere statement that in the nineteenth century a civilized country, now within our jurisdiction, and subject to our protection, has by the act of our President been reduced to a state of absolute anarchy; that it is now without any civil government, and must so remain till Congress shall establish one, is well calculated to excite astonishment and produce alarm. Such results have not, even in more rude and barbarous ages, been generally produced by war, and surely they ought not to be found in this enlightened age. They certainly were not necessary; and, therefore, they seem to demand the just censure not only of the American people, but of all Christendom. Among other strange things, the President solemnly makes to this House this communication in one of the messages on your table:

"The war with Mexico having terminated, the power of the Executive to establish or to continue temporary civil governments over these territories, which existed under the laws of nations whilst they were regarded as conquered provinces in our military occupation, has ceased. By their cession to the United States Mexico has no longer any power over them, and, until Congress shall act, the inhabitants will be without an organized government. Should they be left in this condition, confusion and anarchy will be likely to prevail."

It is my purpose, sir, to examine these statements of the President, and to demonstrate that they exhibit a lamentable lack of statesmanship, and an utter ignorance of the laws of nations, and the theory of our own Constitution. It is laid down, I believe, by every respectable authority, ancient and modern, as the general rule, that when one civilized country conquers another, the laws in force in the conquered country remain until they are abrogated or modified by the conqueror. This, I think, is clearly and undoubtedly the rule of the law of nations. Can it be believed that the effect of a military conquest is a state

of chaos and confusion? To abrogate the laws and destroy the whole civil government of a country, and to make new laws and organize a new government suited to the wants and the condition of a people, necessarily require some time for their accomplishment. No wise and just sovereign would attempt to do such acts until his title by conquest was complete and secure. Is it not flagrantly against every principle of justice and natural right to say, that, during the deliberations of the conqueror on his new code of laws, all civil government is overturned? The conduct of a conquering prince who would abrogate the the laws and overturn the civil government of a conquered province without promulgating new laws and forming a new civil government, would shock the sentiments of all mankind; and hence no such proposition is recognised by the law of nations, which is nothing more than a system of principles of natural equity and justice, recognised by all mankind, and therefore observed by all civilized and enlightened nations. There is not, I venture to say, a respectable author of modern times to be found who says that the laws of a conquered nation do not remain until they are changed by the conqueror.

This question, as must be known to every lawyer in this House, came up in the reign of James I. All who have read Lord Coke know that it was brought before the British courts, with Lord Bacon as counsel on one side, and other eminent counsel on the other. I allude to Calvin's case. He was born in Edinburgh.* After the act of union he brought a real action in England, and the question was whether he was or was not an alien. If an alien, he could not maintain the real action. This case brought up the consideration of these questions, arising from conquest, and it was at that early day decided that, until the conqueror made an alteration of those laws, the ancient laws of that kingdom remained. The right to alter the ancient laws was deduced from the principle that the conquering king had *vitæ et necis potestatem*, and might, therefore, impose such terms as he might think proper.

In earlier days it had been maintained, in the spirit produced by the Crusades, that if a Christian king conquered an infidel kingdom, *eo instanti* the laws of the infidel were abrogated, because they were repugnant to Christianity and the laws of God; and in such cases, they said, that till laws were established by the new king *natural equity should prevail* as the rule of right. But this doctrine was at an early period qualified, even as to infidel countries on conquest, in this: that all laws did not cease, but only such as were against God. A case of this kind is reported somewhere, I think, in Salkeld.

Legal gentlemen are also familiar with the great case of Campbell & Hall, in which Lord Mansfield, on solemn argument, devoted his master mind to the investigation of all the leading questions resulting from conquest. It will be remembered that, in the war with France, Great Britain had taken the Island of

* In the original publication of this speech in the Intelligencer, the words "before the union" were added to this sentence. That was an error; but wholly immaterial to the propositions drawn from the case, or to my argument.

Grenada. A capitulation was granted prior to the proclamation of the peace of 1763. The King had invited by proclamation settlements in Grenada, and appointed a governor, with power to call an assembly to regulate the civil government of the island. After that he undertook to levy a duty of 4½ per cent. on all the produce of the island that should be shipped; and this was a most equitable duty, because it corresponded with the duties in all the other British Leeward Islands. It was solemnly decided in this case, with the approbation of all learned jurists, that it was not competent for the King under those circumstances to change the prevailing French laws, after his proclamation appointing a governor with power to convene an assembly, and that he could not change the French laws in contravention even of the terms of capitulation. It was conceded that, if not contrary to the terms of the capitulation or the treaty of peace, the King had the power, *as a prerogative of his crown*, to alter the laws of a country conquered by British arms, and thus made a dominion of his kingdom. This royal prerogative right to prescribe new laws, or a new civil government, was held to be not an absolute right, but a right limited to such changes of the laws as were not contrary to the fundamental principles of the British constitution. Lord Mansfield, however, recognised the same principles, which were afterwards laid down by our illustrious jurist, Chief Justice Marshall, in the case of Canter, in 1st Peters, that the conquering nation, when its conquest was confirmed and completed, might change the laws of the conquered country.

Sir, by the British constitution, whose deep foundations were laid in feudal times, their King was regarded as the fountain of all honor and all power. To him alone was given the power of making war and making peace, and when new acquisitions were gained by conquest, the conquered country belonged to the King, and he, as the owner of the country, *by right of his crown*, had the right to abrogate the laws he found in existence, and to make new laws for the conquered country, limited, however, by their constitution or the statutes of Parliament limiting his prerogative, and also by the conditions of the treaty which secured and confirmed the conquest. This power he could not exercise of himself over a country derived by descent. This power of a British King to make laws for his conquered provinces as a prerogative of his crown, if I mistake not, flowed or was derived from the principle that the conqueror had the absolute right of life and death over those subdued in arms; and that, therefore, if quarter was given to the vanquished, it was a matter of mere grace, and of course he had the right to impose as conditions whatever terms he pleased. It was on the same reasoning that it was anciently and in more barbarous ages maintained that the conqueror had the right of reducing to slavery those whom he had conquered, as the condition on which he had spared life.

But, sir, the theory of our Constitution is widely different. With us, our President is not the source of all honor and power. He is but the mere agent of the great body of the people, in whom rests the original source of all power, and whose civil government is therefore founded on public virtue as its basis.

It is to be hoped that the President of such a country, to whom alone we have not committed either the power of making war or making peace, will not be maintained in the doctrine that, because he holds the command of our armies in time of war, he therefore has the power, as soon as he obtains possession of a province by force of arms, *flagrante bello*, to abrogate their laws and throw down their civil government. I hope, sir, the great principles of the laws of nations are not to be thus trifled with, and that an American President will not be countenanced in such conduct as will reduce to a state of chaos a neighboring province that may fall before our arms. There is no diadem on the head of an American President; but he has exerted, as I understand these messages, even more of power than was ever held by a European monarch in right of his crown. They never claimed or exercised the right of abrogating all law and making a new code for a city or province, which, in the chances of war, they occupied until the war was over. They have never regarded themselves invested with this title by conquest before the war was closed, by treaty of peace or otherwise. Although the word "conquer," in its popular acceptation, is considered as applicable to the subduing or gaining a victory over any antagonist, I do not understand a title by conquest to be consummated so long as the war continues to rage. You may talk about conquering a passion or conquering a peace, but, as I understand the laws of nations, there is no title by conquest so long as the opposing nation is in existence struggling against her foe.

When Bonaparte invaded the Russian Empire and marched with his victorious troops from city to city, and occupied province after province, did he obtain a right to the country or a title by conquest? No! There stood the Emperor of Russia in hostile attitude, attempting to resist and oppose him. Did he, in the progress made by his arms, overturn all civil government, and the rules to regulate conduct between man and man? Who ever heard of such a pretence? Even when he entered and occupied Moscow he had not obtained the right of conquest.

So, when General Taylor entered Matamoros, no one considered him as having obtained title for his country. When he stormed Monterey, and, with an inferior force, took possession of that strongly fortified city, did any one say he had obtained a title by conquest? I think not. There was Mexico still in arms. She raised another well-appointed army, and fought the battle of Buena Vista; and there was not then a title by conquest, for General Scott had to go with another army on another line of operations, and fight many hard battles before he was able, in the language of the President and his heir apparent, even to "conquer a peace," much less to subdue the civil and military Government of Mexico.

Look, sir, at the examples of Ireland, of Berwick, of Gascony, Calais, Gibraltar, Minorca, Grenada, and other places where the right of conquest attached, and you will find, I think, that the title by conquest, which gave to a British king, in right of his crown as a royal prerogative, the right to destroy or modify

existing civil governments, was never asserted till after the treaty of peace. Sir, on this point the language of Chief Justice Marshall is :

"The usage of the world is, if a nation be not entirely subdued, to consider the holding of a conquered territory as a mere military occupation, until its fate shall be determined at the treaty of peace. If it be ceded by the treaty, the acquisition is confirmed, and the ceded territory becomes a part of the nation to which it is annexed, either on the terms stipulated in the treaty of cession, or on such as its new master shall impose."

Our President, it appears, has claimed and exercised the right, *during the war*, to establish *civil government* in New Mexico. The claim to this power he asserts under the laws of nations, whilst New Mexico was regarded as a conquered province in our military occupation. I contend that our civil jurisdiction never attached under the laws of nations before the treaty of peace was made. The President, upon his assumption of power to legislate for this province whilst the war was still raging, and before its fate had been determined, has, as he informs us, destroyed the civil government of the province, and established a new civil government. In his thirst and eagerness for conquest, he has not been willing to wait till the fate of the countries which he had occupied by armed forces was determined. In this will be found, in my opinion, the source of most of those errors which have led him step by step to violate and overturn the Constitution of his own country and violate the laws of nations.

But, sir, when our conquest was secured by the treaty, the power of abrogating the Mexican laws and establishing a new civil government did not vest in our President. That power belonged to the people of the United States, to be exercised by their Representatives in Congress assembled. Our President usurped the power of opening custom-houses and laying taxes upon the commerce of the world with Mexico; and he did not stop there. The money thus raised by taxes laid by the President in the name of the United States has been expended by the President or his officers in prosecuting the war, notwithstanding the provision of our Constitution that no money shall be drawn from the Treasury but in consequence of appropriations made by law. I suppose we will be told in due time that this provision has not been violated, because the money was never placed in the Treasury of the United Sates. Sir, this would not be a more remarkable argument than some of those now offered to defend the Executive usurpations boldly avowed in these messages.

When England conquered a province or an island, and her title was completed and confirmed by a treaty of peace, according to the theory of her Government the fee simple of the public domain of the conquered country vested in the king by force of the prerogative of his crown. He could not only make laws for it, and levy taxes in it for his private use, but he could dispose of the soil by his royal grant. We all remember that many of the proprietary and colonial governments in America, prior to the Revolution, were based on this right of the British crown. Although the king had originally claimed New York by discovery, and had given it by charter to the Duke of York, he, during a war, afterwards conquered it from the Dutch, and Charles the Second, electing to

hold by conquest, changed its civil government by granting new letters patent to the Duke of York after this conquest. It cannot be pretended that the title of a country conquered by our arms vests in our President; and, if not, then it follows that he can neither grant it by letters patent, nor levy taxes upon it to be used as he pleases. Sir, the assertion of this power by our President would put it out of the power of Congress to put an end to any war in which we may be engaged. The fathers of our Constitution thought that the power of the Congress to withhold supplies, placed it in their hands to check, if necessary, the Executive in the prosecution or continuance of unnecessary wars. But, if these new views of our Cabinet are acquiesced in, there is no check upon the Executive left, so long as he can occupy foreign countries and be able to levy on them taxes sufficient to support his armies. He would thus get rid of the limit which the Constitution placed upon the powers of Congress, when it said that Congress shall have power to raise and support armies, "but no appropriation of money to that use shall be for a longer term than two years." So anxious were those who formed our Constitution to make effectual the check on the power of the President to continue wars, that they would not allow Congress to vote supplies beyond the period that the people could send new Representatives. All this wisdom is but foolishness, if the President can strike these constitutional provisions dead by seizing foreign countries and taxing them and using the money.

Sir, our fathers, in all their efforts to separate the powers of the purse and the sword, labored in vain if these usurpations shall be tolerated and approved. I hope that, far as we may have advanced in the session, and pressed as we are with important business, the House will not allow such doctrines to be avowed and practised upon without rebuke. We owe it to ourselves, to our fathers of the Revolution, to the cause of civil liberty, to watch the silent and stealthy tread of Executive power; and when such usurpations are made manifest, we should, in the spirit of the stout Barons of Runnymede, give them a stern rebuke, and take such measures as will in future ages cause the Executive power to flow in its own legitimate channel.

We are in no danger of having our liberties overthrown by direct and open force. History teaches us that the forms of our Constitution would probably long remain after tyranny might, in fact, have trampled over our free institutions. If ever the temple of our liberties must fall, (which may God avert!) it will be by reason of the silent and regular approaches of Executive power, undermining first one of its pillars, and then another, until it tumbles of its own weight.

But, sir, these same false doctrines into which the President was evidently betrayed by his inordinate thirst for conquest and for acquisition of territory, have naturally led him into other enormities. When a monarch, with either arbitrary or limited powers, conquers a country, and his title has been completed by a treaty of peace, and he thus acquires the right of giving new laws to his new subjects, the correlative obligation of giving them protection rests upon him.

The corollary from which is, they thereby become citizens of his realm and owe to him allegiance. No principle of the laws of nations is better settled than this. It was formally settled in Calvin's case. Chief Justice Marshall says. "The same act which transfers their country transfers the allegiance of those who remain in it." It is the lawful allegiance of the books, as contradistinguished from natural allegiance. No respectable jurist, it is believed, denies it.

But let us see how this has been perverted by our President. He takes possession of New Mexico, and occupies it by force of arms. Whilst the war is in progress, and the fate of the province still uncertain, he abrogates their laws and overturns their civil government, and establishes another, and thereafter the inhabitants who remain are considered as bound to allegiance to him, and actually proceeded against in his civil and military courts, and executed for treason. We have been told, in some instances, that they were, during the war, compelled to take the oath of allegiance to our country. The great error consisted in this, that the strong desire for conquest and acquisition, which appears to have been the predominating feeling of our President, induced him to consider his title by conquest complete before it was in fact so according to the laws of nations. He has, in violation of reason and justice, and without authority, in fact, overturned the civil government of New Mexico, and established another of his own creation in its stead; and now, when, with exultation, he comes to offer us his bantling, he is struck with the *reductio ad absurdam* to which his own blunders have led him. Reckless as have been his usurpations, he was not ready to crown them all by stating to Congress that, apprehending they might not understand the principles of civil liberty, he had arrogated the prerogative of a royal crown, and legislated for New Mexico, and given to them a constitution which would protect their civil rights, and that he had thus saved us all trouble on that subject. Modestly apprehending that this might be going so far that a dominant party might not be willing to sustain it, under the all-powerful appeal to support the President, he was forced to take as the only remaining ground the position that his civil government was only temporary, and therefore ceased with the peace; and, as the Mexican power was gone by the treaty, the strange and monstrous conclusion to which he is brought is, that New Mexico is without any civil government, and that anarchy and confusion must prevail till by legislation we give them a permanent or a temporary civil government. Instead of this state of things, the laws and civil government of Mexico ought to be found there in full and quiet operation, and should so continue to prevail, in their legitimate course, till Congress, upon deliberation, provided for their wants and necessities. Is it possible that in New Mexico there is no organized civil government to protect persons and property? That there is no judicial power to enforce a contract or redress a tort? Such I am bound, from the declarations of the President, to infer is the condition of things in that unfortunate country, unless, indeed, the State of Texas has kindly interposed in their behalf, and given them a civil government.

On the face of the message just read, the President attempts to defend his usurpations upon the authority of Rice's case, in 4th Wheaton, by making quotations therefrom. The only question there was, whether goods which had been imported into Castine whilst the British held it as a fortified place were, after the restoration of the town to us on the peace, subject to American duties. The question to be decided was considered so plain that the court was not only unanimous, but said it was not necessary to rely on or cite any authorities in support of it. Any person who will reflect on it will see that if, whilst the British held Castine, they had imported provisions, clothing, or other articles for their troops, they could have given away or sold the excess, when about to leave the place, without subjecting the things, thus sold or given, to American duties. It is too plain to need authority or argument to establish it, that any thing admitted into Castine by the British was not an importation into the United States, within the scope of our revenue laws. The passages quoted from Judge Story's opinion may well be said to be *obiter dicta;* to be propositions laid down more broadly than the decision of the case required. Chief Justice Marshall agreed to the decision; and it is not to be supposed that he intended then to controvert the proposition which he laid down in Canter's case, and which is in almost the same words he reasserted in Boyle's case, in 9th Cranch, when he said: "Although *acquisitions made during war are not considered as permanent until confirmed by treaty*, yet to every commercial and belligerent purpose they are considered as part of the domain of the conqueror," &c.

But it is strange that the President did not perceive that the very opinion of Judge Story, from which he quotes, would condemn his acts, instead of justifying them. Concede to him that the moment he occupied New Mexico, California, or Vera Cruz, that they were to be regarded as part of our domain, belonging to us as conquerors; the consequence would clearly be, that under our Constitution the President could exercise *no legislative powers* over them. All legislative power over our whole domain is granted to Congress. A qualified veto, it is true, is given him as a conservative power, and to check improvident legislation. The question is then presented, whether the repeal of the laws of a conquered country, and the making new civil governments, and the making of tariffs, and collection of duties on goods imported *into our country*, are or are not the exercise of legislative faculties? To my mind it is clear that they are. In what, I ask, does a civil government consist, but in prescribing rules for the civil conduct of its subjects? In political society every individual surrenders a portion of his natural rights to procure, in lieu thereof, certain civil rights, for instance: it is the *natural right* of every man to defend or prosecute his rights by his own strong arm; but in political society he surrenders those natural rights, and obtains the civil right of being protected, and having his wrongs redressed, by the civil government under which he lives. The prescribing the law for the government of the civil conduct of individuals, is clearly a legisla-

tive function. The organization of civil government, to my mind, involves at least the delegation, if not the exercise, of legislative power.

So, too, as to adjusting tariff laws and imposing duties. What is this but the laying a tax on commerce? And does not that require the exercise of legislative power? To my mind it is clearly so. It is not a military contribution, but a rule of civil conduct. No one is by it bound to contribute. It operates not alone on the enemy. The citizen or the stranger is left free to import and pay the duty or not. It is essentially a mere tax laid on commerce, and is universally recognised as a tax. No one will deny the military right of a conquering commander, in time of war, to quarter on the enemy; and to levy military contributions to support his army, as a mitigation of the hardships that would result from seizing such private property as may be necessary for the support of his army. But these are clearly distinguishable from the ordinary legislative power of laying taxes on commerce, or on real estate, or on chattels. No one will doubt the right of a military commander, on taking a city or province of his enemy, to exclude the introduction of contraband goods, or any other importations, in his discretion. In such a case a British king, treating it as a conquest, may, by the powers of his crown, levy taxes upon its commerce. Not so, I apprehend, with our President. In the Castine case, just cited, the British king levied duties on the goods imported. But surely the President cannot intend to rely on that to establish right on his part to levy duties in Mexico. The cases would be similar if he were entitled to the prerogatives of the British crown. If it is a part of our domain, all legislative power over it belongs alone to Congress. Let it not be forgotten that a British king originally possessed the legislative, executive, and even judicial power. He presided over his courts, and dispensed justice in person. He possessed plenary legislative powers, and the constitutions of England are but concessions, which have been, step by step, extorted from the crown in favor of civil liberty. He still holds an absolute veto on the acts of his lords and commons, and all his laws at this day are the King's acts in parliament.

It is strange, when we see in Prussia, in Austria, and other monarchies, the people rising and demanding constitutions or concessions in favor of civil liberty from those whose rule was founded on the divine right of kings, that the so-called Democratic party of the United States should be found struggling for high prerogative power? They are claiming for their President the right to overthrow and to set up civil governments, and to lay taxes, or regulate tariffs within our domain.

This power over a conquered country, as a part of his original legislative powers, remains in a British king, only because no limitation as to conquered countries, has been placed upon his prerogative rights; all the concessions, which have been extorted from him, applied only to the subjects of his realm, and hence he can exercise these powers on conquest. But once exercised, the country becomes part of his dominion; and thereafter, the concessions which form the British constitution apply, and he can only legislate for them in parliament.

The old Republican party feared that the powers of the President and of Congress were too great, and therefore they planted themselves in opposition to encroachments. The old Federal party feared the powers of the President and of Congress were too weak, and were therefore for strengthening them. The Whig party now are found where the Whigs where long before our Revolution, struggling against the insidious march of prerogative power; and it is a little curious that those who call themselves Democrats should be contending for an enlargement of Executive powers, and for conceding to an American President those powers, which a British king can only exercise, because his crown happens not to have been shorn of them, as to his enemies.

The President is himself bound by the rules and articles of war. The military laws are themselves the creature of the legislative power, and the President being deprived of legislative power, cannot repeal or abolish them under our Constitution. As the head of the army and Chief Executive, he can prosecute an offensive or defensive war, and exercise all the military power given to him by the laws military. Whenever he assumes legislative power it is usurpation.

Sir, I have for want of time passed over the propositions that our country was reluctantly engaged in this war in the necessary defence of our national honor, and that the territories ceded to us constitute full indemnity for all past injuries and the costs of this war; and that the brilliant achievements of our gallant officers and soldiers in this war constitute the cabilistic security for the future, which have been so often repeated as to have become stereotyped, and therefore must have a place in every message. I have passed by the recommendation to double the force of the old army while it professes to reduce it to what it was before the war. I have not stopped to notice, as it deserves, the change of tone as to the efficiency of volunteers as compared with regular troops. I have passed by the alarming agitation of the slavery question which these conquests have thrown upon us. I have purposely avoided a comment on the contradictions which exist between this and other messages, or upon the exhibits of this message which have not yet been read to us or placed in our hands, and thus far I have been considering the subject altogether independently of the claim, right, or jurisdiction of Texas over any part of this country.

But, sir, the argument against these enormous strides of Executive power assumes an *a fortiori* shape when we come to consider that all these violations of social order and social duty have actually taken place within the sovereignty of one of the States of this Union. The President tells us it is his opinion that the place in which he has exerted these arbitrary powers is within the State of Texas—a State which was admitted into our Union with all the rights, powers, and privileges of the Old Thirteen. What would be said, sir, if the President, under any conjuncture, should, with military force, occupy a county of South Carolina or Massachusetts, destroy all civil government in it, and, after reducing every thing to chaos and anarchy, ask Congress to legislate a

new code for such county within the jurisdiction of either of those chivalric and venerated States? Sir, the usurpations that brought the head of Charles to the block were not half so monstrous; and yet we bear all this, in the very licentiousness of liberty, because we feel that we are free.

I respectfully suggest, for the consideration of those with whom it is my good fortune to co-operate on this floor, the inquiry, what should be the measure of our rebuke for a case like that which is now presented? and whether such proceedings, as these lawless usurpations of power demand, would have a better chance for calm and dignified deliberation at our next session, after the exciting questions that now engross the public mind shall have been disposed of by the people? For one, I make, at least, my solemn protest against these dangerous proceedings, and will hold myself ready, either at this session, or the proper time, firmly and boldly to vindicate the Constitution against these unparalleled outrages.

When Louisiana was admitted into our Union, her civil government and laws were allowed to remain, and such was the case under Mr. Monroe in regard to Florida. When Gen. Jackson was sent with the treaty under the great seal of Spain to take possession, with the high powers of the Intendant General of Cuba, he did not abrogate the existing laws or civil government. It has been reserved for an Administration, boasting of its Democracy, to level every thing, to overturn every thing, and bring a large portion of a sovereign State of this Union into a state of anarchy. Sir, this, I take it, is going a bow-shot ahead of Dorrism, or of the *ateliers nationaux* of France. The wild spirit of Democracy, degenerated into Jacobinism in its worst days, cannot, in my poor judgment, outstrip the achievements of our President over civil liberty which these messages exhibit; for he presents to us and to the civilized world the strange spectacle of a civilized and christian people, and they, too, within the jurisdiction of one of our sovereign States, being by his acts reduced to a state of anarchy. I hope, sir, this House will not allow such a precedent to stand without condemnation, and that it will not finally lay aside these messages without vindicating the principles of civil liberty which they have so wantonly outraged.

Allow me now to say a few words in relation to the position in which Texas stands to a part of the territory referred to in these messages. And here let me add that I cannot agree with my honorable friend from Ohio (Mr. Vinton) in denouncing the President for having expressed his opinion as to the effect of the treaty of peace on the title of Texas. I do not see that any exception can be taken to the expression of the opinion of the President, or any officer of this Government, or any private person, as to the legal effect of the legislation of this country. The President has but given his construction of the annexation resolutions passed by Congress and the late treaty. I fear, sir, that there is good foundation for the opinion which he has given us. Indeed, I incline to the opinion that the conclusion to which he has come as to the mere right of Texas will, on careful examination, be found to be correct and sound.

I was, I believe, the first person that ever addressed a public meeting in favor of an effort to have Texas introduced into our Union. But I did not advocate it upon the terms and in the mode that it was accomplished by the Democratic party. In April, 1836, a large popular assembly in Louisville, on my motion, resolved "that if, in our negotiations with Mexico, the President could add Texas to our Union on any reasonable terms satisfactory to Mexico, and consistent with the honor and the interest of Texas, such a course on the part of our Government would meet our entire approbation." Our Constitution has wisely deposited the power and the right of making contracts with foreign governments (which is strictly neither an Executive nor a Legislative power) in the hands of the President, with the approbation of two-thirds of the Senate.

Two modes of annexation were proposed: one by mere resolution, and the other by treaty. To the former serious and well-founded objections were taken, both as to the constitutional power and the terms in which the proposition was couched. By adding the latter as an alternative mode, the resolutions were passed. It was emphatically a Democratic measure, passed by the Democratic party in both Houses. Only three Whigs voted for it in the Senate, and a very small number in this House. It was hurried on with headlong, headstrong purpose, in obedience to the high behests of the Democratic party. The deed was done, whether for good or for evil; and for its accomplishment in the mode it was carried out, the Democratic party are justly accountable.

Upon examining those resolutions proposing to Texas terms upon which she might be annexed, it will be found on their face that Texas had laid claim to some territory which she had not reduced to actual possession. I am not about to inflict on this House a dissertation on the geography of Texas or the march of the army to the Rio Grande. But these resolutions show on their face that between the contracting parties some disputes as to her boundary by foreign governments were anticipated. Now, it is clear that these terms were introduced in reference to Mexico and the Mexican States; for on the east and north we owned the coterminous territory ourselves, and therefore it was understood that there were disputes between Texas and the Mexican States as to her western and northwestern boundary. The United States proposed as one of the terms that Texas "shall also retain all the vacant and unappropriated lands *lying within its limits*," subject to the reservation of a power by the United States for "*the adjustment by this Government of all questions of boundary that may arise with other governments.*" The United States having, by the treaty as made, put it out of the power of any foreign government to raise any question as to the boundary of Texas, it would seem that we cannot dispute the boundary as claimed by her.

[Here Mr. VINTON interposed, and suggested that Texas was admitted, not by any specified limits, but that the annexation had admitted only the territory that belonged to Texas.]

I admit that Texas was not guarantied any specific boundary, and that we

admitted only what was properly included within and rightfully belonged to Texas. It was a fundamental proposition of the whole contract of annexation, that the United States were not to have any such difficulties as had been presented in reference to the Maine boundary, and that the United States was to have the power of adjusting the disputes which might arise with any foreign governments as to that boundary. It is, nevertheless, clear, on the face of these resolutions, that Texas claimed a boundary which was known by both parties to be subject to dispute. And here, sir, permit me to ask how the United States was to adjust that disputed boundary? Between independent sovereign nations there are but two modes of adjusting their disputes. One is by reason, the other by the sword. The President tried the former and failed. By our Constitution the latter can only be resorted to by Congress, in which body is vested the war-making power. It follows as a corollary that, *if in such a case the appeal to force was made by the President*, it was in violation of his constitutional duties. Whether the resort to force as to this territory, declared on the face of the annexation resolutions to be disputed, was a step taken by our President or by Mexico, I will not stop here to investigate. The point to which my argument leads me is this: The parties having understood and agreed that Texas claimed a boundary which was disputed, not with us, but with some foreign nation or nations, that we agreed to admit her not according to the boundary claimed, but with the boundary that might be found to belong to her, and that we should have the power of adjusting what did belong to her. Now, when the United States has by her treaty, in the shape in which that treaty was negotiated, silenced all disputes with any foreign Government, is she not estopped to deny the boundary as claimed by Texas? [Here Mr. BAYLY suggested the reference to the Missouri compromise line.] Yes, sir, it stands conceded on the face of these resolutions that Texas claimed north of 36° 30′ territory enough to make hereafter two States; and express stipulations are made in the contract of annexation as to these two States thereafter to be made *with the assent of Texas;* and yet it is clear that Texas had no inhabitants, no actual *pedis possessio*, as far north as that Missouri compromise line. This shows conclusively that it was clearly in the contemplation of the parties to this contract that Texas was to hold this land claimed by her north of 36° 30′, if, in the adjustment of her boundary *with foreign governments*, the claim of such foreign governments thereto could be silenced or quieted. Mark the fact, that there was no reservation of a power on the part of Congress to settle any dispute between the United States and the State of Texas. It would have been subversive of every one's idea of justice to permit one party to a dispute to become the arbiter of that dispute. The United States never asked, Texas never consented to, any such terms. It is, therefore, idle to talk about the power of Congress by legislation to determine that question.

This matter might have been satisfactorily adjusted with prudence and foresight. By making a treaty adjusting first the boundary between Texas and

Mexico, settling what was properly included within and rightfully belonged to Texas, there can be no doubt that Texas would have been concluded; and I will go further, and say, that I have no doubt that the United States in making such a treaty, would have acted justly, in settling with Mexico the boundary of what rightfully belonged to Texas, so as to exclude New Mexico altogether. And then the United States would have been competent to purchase New Mexico, and we should have been relieved from the entangling and alarming questions which are now presented. The citizens of New Mexico have had their allegiance transferred with the expectation that they were to be at liberty in due process of time to form a new State. And lo! they find that they are, by the manner in which the whole matter has been contrived, a part of Texas, and bound so to remain till Texas shall assent to the formation ot a new State north of 36° 30′. New Mexico, having been reduced to anarchy by the President, would now, but for the controlling power of this Union, take up arms rather than submit to the jurisdiction of Texas, to which she has been subjected by the unparalleled statesmanship of this Democratic Administration.

In the midst of the congratulations with which these messages abound, I find much cause of alarm and much to deplore. These things ought not to be so. Texas, as she has been made to exist by operation of the treaty, is greatly too large. She has been given, and we cannot escape from it without her consent, a territory that I am satisfied was not when she was admitted properly included within and rightfully belonging to her. And we are in actual danger of civil commotion unless these subjects shall be handled with prudence and care. It becomes the duty of American statesmen to examine and ponder on these things with deep solicitude. If Texas shall, Shylock like, demand her bond, the question with me will not be, whether I would have done the things which have produced these conflicts, but whether *in hæc fœdera veni?*

Sir, there is but one remedy for these evils that I can see, and from that there is much ground for hope. It is, that our newly acquired State of Texas may possess those enlarged, and patriotic, and liberal views which animated Virginia, when, to promote the general welfare, and relieve her sister States from jealousy and discord, she made to the United States a cession of all her territory northwest of the Ohio river. Texas, under the existing state of things, owes it to herself and to the generous sympathy which she received during her revolutionary struggle from all parts of the United States, to approach this subject with comprehensive and liberal views. She owes it to the peace of that Union, of which she is an honored and valued member, to take the course which the peace of the whole country demands. And the United States should, as an atonement for all her errors and blunders in these matters, resulting from the short-sightedness of her statesmen, be prepared and ready to yield any just equivalents that might be required to accomplish such important results.

My hour is just expiring, and I cannot take up and discuss any other questions presented by these messages, and I therefore resign the floor.

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